

**REMARKS**

Entry of the foregoing and further and favorable reconsideration of the subject application in light of the foregoing amendment and the following remarks:

Applicant respectfully submits that no new matter has been added.

Claims 1-10, 13 and 14 are currently pending, claims 11 and 12 having been withdrawn from consideration pursuant to the Examiner's Restriction requirement under 35 U.S.C. 121 for a single disclosed species for prosecution on the merits.

**35 USC § 112 (First and Second Paragraphs)**

On page 2 of the Office Action, the Examiner rejects Claims 1-10, 13 and 14 under 35 USC 112 (First Paragraph) asserting lack of support for "a continuous, non-composite, circumferentially closed tubular, substantially topologically plain, substantially non-rigid sheet liner" and "non-composite closed bottom end". Accordingly, the Examiner rejects claims 1-10, 13 and 14 under 35 USC 112 (Second Paragraph) as indefinite, asserting that lack of support in the Specification because the term "non-composite" is not understood.

In response, Applicant submits that the term non-composite is understood to one of skill in the art as meaning "not composite." Composite is defined as "made up of disparate or separate parts or elements" or "a structure or an entity made up of distinct components" or "consisting of separate interconnected parts." (See Dictionary.com definitions attached hereto).

The Specification and Figures clearly set forth that the instant invention is made from a single sheet, which is therefore non-composite.

Support for Claim 1 as presently amended is found generally throughout the Application. Specifically, support for “a continuous, non-composite, circumferentially closed tubular, substantially cylindrical, substantially non-rigid sheet liner” can be found in the Specification at pages 3, 7 and clearly in Figures 1 -3. Support for “a plurality of apertures between the interior side and the exterior side, and the apertures are positioned in a pattern which is regular and repeating and is in an alternating anti-parallel orientation” can be found generally throughout the Application and specifically at pages 3, 6 and clearly in Figures 1-3, and particularly in Figure 2 with respect to the regular repeating pattern of orientation.

Accordingly, Applicant respectfully submits that the Claims as amended obviate the rejection under 35 USC 112 (First and Second Paragraphs) and respectfully urges the Examiner to withdraw the rejection(s).

**35 USC § 102(b)/ 103(a)**

**Henry (US 5241784)**

The Examiner rejects Claims 1, and 6-10 under 35 USC 102(b) as anticipated by Henry (US 5241784) or as rendered obvious by Henry under 35 USC 103(a) in view of other cited prior art.

The Examiner asserts that for Claims 1 ,9 and 10, Henry discloses a protection device comprising: “a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation.” The Examiner particular directs attention to Figure 6 of the

Henry disclosure, noting that the apertures are capable of preventing passage of vermin and permitting passage of water.

In response, the Applicant respectfully submits that the disclosure of Henry is entirely distinct from the instant invention as presently claimed.

Henry discloses a composite single layer, corrugated sheet of material, which must be folded back on itself and fastened together by overlapping the edges, connecting them together by a connecting means (i.e. screw or bolt) in order to form a cylinder. Indeed, Henry further teaches at Claim 7 "holes spaced along each vertical edge of said sidewall for allowing fastening member to pass through and connect said vertical overlapping edges to form said cylindrical shape." Still further, Henry's container provides that "the lower edge of said sidewall being the perimeter of the bottom of said container." Thus, Henry's sheet necessarily must be bent into a cylinder shape, with overlapping edges that must be fastened to each other. Henry's folded sheet, is not only composite, but lacks an integral bottom as well. Indeed, the bottom is only provided as a separate element as described at 40 and Claim 6.

The Examiner also asserts that Henry discloses rows of diagonally shaped apertures, asserting that "Henry further discloses a plurality of diagonally shaped apertures" at page 4 of the September 18, 2007 Office Action. Applicant respectfully directs the Examiner's attention to Figure 6 of Henry. If the non-contiguous corrugated sheet is laid flat, it is apparent that the apertures are not diagonal, but restricted to horizontal or vertical orientation. Apertures that the Examiner has identified as "diagonal" are in fact horizontal or vertical. It is respectfully submitted that any "diagonal" interpretation of the drawing is in fact a misreading of the "perspective" view of the drawing. Indeed, at Column 4, Henry clearly specifies aperture

configurations as "horizontal and vertically oriented" in referencing Figure 6. Thus, Henry teaches away from the disclosure of the present invention.

The Examiner further asserts that Applicant's open "comprising" claim language reads on Henry.

Applicant has hereinabove amended Claim 1 of the instant invention to set forth the present invention to "consisting of" form. Applicant's invention is made from a single unit of material (i.e. "non-composite"), while the disclosure of Henry is an assembly of multiple, separate parts (i.e. "composite").

Accordingly, Applicant respectfully submits that the application as amended is therefore not anticipated by Henry et al, nor rendered obvious by Henry et al in view of the cited prior art and urges the Examiner to withdraw the rejection of Claims under 35 USC 102(b) and 35 USC 103(a)

**Takita (US 5564223)**

On page 4 of the Office Action, the Examiner rejects Claims 1, 2,4 and 5 under 35 USC 102(b) as anticipated by Takita (US 5564223).

The Examiner directs Applicant's attention to Figure 1A of the Takita disclosure.

In response, the Applicant respectfully submits that the disclosure of Takita is entirely distinct from the instant invention as presently claimed.

Applicant respectfully submits that Takita discloses a porous foam, quick peelable fruit protective wrap. The apertures of Takita are irregular in size, position and orientation. They are random and without pattern in contrast to the instant invention. There is nothing in Takita to

suggest the anti-parallel orientation of the apertures disclosed by the instant invention, let alone any regularity or importance in the positioning of Takita's pores. Indeed, Takita teaches away from the disclosure of the instant invention in describing the formation of the pores as a result of the extrusion process of forming the foam.

Moreover, Takita is specific in describing (and claiming) required essential overlapping folds and essential notches (defined by a pair of spaced apart strips that extend along said sides of said bag) formed in the extrusion process, entirely distinct – and teaching away—from the present invention. In particular, Takita's Figures 1 and 2 clearly show the essential and required folding and notch elements of the Takita disclosure, which are entirely distinct from the present invention (see for example, Figure 1 of the instant application).

Accordingly, Applicant respectfully submits that the application as amended is therefore not anticipated by Takita and urges the Examiner to withdraw the rejection of Claims 1,2,4, and 5 under 35 USC 102(b) as anticipated by Takita (US 5564223).


Applicant respectfully submits that the prior art does not suggest the combination disclosed by the present invention.

### CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the application and amended claims are now in proper form for allowance and that the amended claims are patentable over the prior art. Therefore, Applicant respectfully submits that the application is now in condition for allowance, and solicits favorable action on all pending claims, namely Claims 1-10, 13 and 14.

Patent App. Number 10/694,463  
Attorney Docket No.: PA00912-L

If for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. 706.03(d) and 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings. In the event that there are any questions concerning this Amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of the application may be expedited.

Respectfully submitted,  
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Date: November 19, 2007



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composite

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 com·pos·ite [kuh-m-poz-ih] [Pronunciation Key](#) - [Show IPA](#)  
[Pronunciation](#) *adjective, noun, verb, -it·ed, -it·ing.*

*-adjective*

- made up of disparate or separate parts or elements; compound: a *composite drawing*; a *composite philosophy*.
- Botany.* belonging to the Compositae. Compare [COMPOSITE FAMILY](#).
- (initial capital letter) Architecture.* noting or pertaining to one of the five classical orders, popular esp. since the beginning of the Renaissance but invented by the ancient Romans, in which the Roman Ionic and Corinthian orders are combined, so that four diagonally set Ionic volutes, variously ornamented, rest upon a bell of Corinthian acanthus leaves. Compare [CORINTHIAN](#) (def. 2), [Doric](#) (def. 3), [Ionic](#) (def. 1), [Tuscan](#) (def. 2).
- Rocketry.*
  - (of a rocket or missile) having more than one stage.
  - (of a solid propellant) composed of a mixture of fuel and oxidizer.
- Nautical.* noting a vessel having frames of one material and shells and decking of another, esp. one having iron or steel frames with shells and decks planked.
- Mathematics.* of or pertaining to a composite function or a composite number.

*-noun*

- something composite; a compound.
- Botany.* a composite plant.
- a picture, photograph, or the like, that combines several separate pictures.

*-verb (used with object)*

- to make a composite of.

[Origin: 1350-1400; ME (< MF) < L *compositus* (ptp. of *compōnere* to put together), equiv. to *com-* [COM-](#) + *positus* placed; see [POSIT](#).]

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com·pos·ite  (kam-pōz'īt) Pronunciation Key  
adj.

1. Made up of distinct components; compound.
2. *Mathematics* Having factors; factorable.
3. *Botany* Of, belonging to, or characteristic of the composite family.
4. *Composite Architecture* Of, relating to, or being in the Composite order.

n.

1. A structure or an entity made up of distinct components. See Synonyms at mixture.
2. A complex material, such as wood or fiberglass, in which two or more distinct, structurally complementary substances, especially metals, ceramics, glasses, and polymers, combine to produce structural or functional properties not present in any individual component.
3. *Botany* A composite plant.
4. *Mathematics* The application of one function to another. For example, if  $f(x) = x^2$  and  $g(x) = x + 1$ , then the composite  $f(g(x)) = (x + 1)^2$  and the composite  $g(f(x)) = x^2 + 1$ .

[French, from Old French, from Latin *compositus*, past participle of *componere*, *to put together*; see component.]

com·pos'ite·ly *adv.*, com·pos'ite·ness *n.*

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composite (adj.)

1563, from O.Fr. *composite*, from L. *compositus*, pp. of *componere* "to put together," from *com-* "together" + *ponere* "to place" (see position). The noun is attested from 1656.

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composite

*adjective*

1. consisting of separate interconnected parts
2. of or relating to or belonging to the plant family Compositae

*noun*

1. a conceptual whole made up of complicated and related parts; "the complex of shopping malls, houses, and roads created a new town" [syn: complex]
2. considered the most highly evolved dicotyledonous plants, characterized by florets arranged in dense heads that resemble single flowers



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**Composite**

A grouping of equities, indexes or other factors combined in a standardized way, providing a useful statistical measure of overall market or sector performance over time. Also known as a "composite index".

***Investopedia Commentary***

Usually, a composite index has a large number of factors which are averaged together to form a product representative of an overall market or sector. For example, the Nasdaq Composite index is a market capitalization-weighted grouping of approximately 5,000 stocks listed on the Nasdaq market. These indexes are useful tools for measuring and tracking price level changes to an entire stock market or sector. Therefore, they provide a useful benchmark against which to measure an investor's portfolio. The goal of a well diversified portfolio is usually to outperform the main composite indexes.

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Also spelled: Composite Index

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,463	10/27/2003	Rosemarie P. Denicola	PA-0019-L	2514
44323	7590	12/11/2007		
STEVEN B. STEIN 114 OLD BLOOMFIELD AVENUE PARSIPPANY, NJ 07054			EXAMINER NGUYEN, TRINH T	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/694,463

Applicant(s)

DENICOLA, ROSEMARIE P.

Examiner

Trinh T. Nguyen

Art Unit

3644

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(h).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: of record.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
TRINH T. NGUYEN  
PRIMARY EXAMINER

Continuation of 3. NOTE: Inserting "consisting of" into claim 1 raises new issue and thus require further consideration.